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LIMDIS, FOR ROBERT ROSENSTOCK, US LEGAL DIVISION ONLY

FOLLOWING REPEAT SAN JOSE 0620 ACTION SECSTATE DTD 14 FEB 77.

QTE: LIMITED OFFICIAL USE SAN JOSE 0620

E.O. 11652: N/A

TAGS: PGOV, PFOR, CS

SUBJECT: COSTA RICAN JUDGE RULES THAT NO EXTRADITION LAW EXISTS

1. SUMMARY. A SURPRISE RULING BY A COSTA RICAN JUDGE STATES
5#-5 ,9 3/54-\$8589,)-2 3/8 5. JUDGE ALSO SAYS THAT IF AN EXTRA-
DITION TREATY DOES NOT SPECIFICALLY ADDRESS EXTRADITION PROCEDURE,
IT CANNOT BE CONSIDERED. EMBASSY IS CONSULTING LAWYERS TO SEE
HOW THIS AFFECTS U.S. EXTRADITION ATTEMPTS, IF AT ALL. END SUMMARY.

2. ACCORDING TO A COSTA RICAN PENAL JUDGE RULING ON A SPANISH
EXTRADITION REQUEST, COSTA RICA DOES NOT HAVE AN EXISTING
EXTRADITION LAW. JUDGE'S REASONING HINGES ON THE DATES OF
PROMULGATION OF COSTA RICA'S MOST RECENT PENAL CODE AS COMPARED
TO DATE OF 1971 EXTRADITION LAW. IN THIS OPINION, HANDED DOWN
ON JANUARY 25, JUDGE HELD THAT:

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-- JULY 1971 LAW WAS EXPLICITLY LINKED TO 1941 PENAL CODE.

11 1941 PENAL CODE WAS REPLACED BY A NEW PENAL CODE,
DATED NOVEMBER 1971, IN WHICH PREVIOUS CODE AND "ALL LEGAL
DISPOSITIONS WHICH WERE ADDED TO IT OR WHICH REFORMED IT" WERE
ALSO ABROGATED. RESULT: THE 1971 LAW WAS NULL AND VOID.

-- THEREFORE, 1974 "VESCO" LAW AND NEW 1976 EXTRADITION LAW, WHICH ARE BOTH REPEALS OF THE 1971 LAW, WERE "STILLBORN" AND "NEVER EXISTED."

3. JUDGE ALSO NOTED THAT 1898 SPANISH-COSTA RICAN EXTRADITION TREATY STATED THAT "EXTRADITION OF CRIMINALS WOULD BE CARRIED OUT IN ACCORDANCE WITH THE EXISTING LEGISLATION IN EACH COUNTRY." SINCE NO SUCH LEGISLATION EXISTS IN COSTA RICA, JUDGE NOTES, EXTRADITION IS DENIED IN THE CASE OF THE SPANISH CRIMINAL.

4. LA NACION FEBRUARY 13 SUMS UP KEY ELEMENT THIS DECISION AS FOLLOWS:

A) THERE IS NO LAW COVERING EXTRADITION.

B) ALTHOUGH A TREATY MAY EXIST, IF IT DOES NOT ADDRESS PROCEDURE, OR THE AUTHORITY FOR THE SAME, A JUDGE CANNOT CONSIDER THE CASE. ACCORDINGLY, JUDGE DECLARED HIMSELF INCOMPETENT TO TAKE ACTION ON THE SPANISH GOVERNMENT'S REQUEST.

5. COMMENT: EMBASSY IS IN PROCESS OF CONSULTING SOME OF COSTA RICA'S MOST LEARNED LEGAL EXPERTS TO DETERMINE WHAT THIS DECISION REALLY MEANS, AND MOST IMPORTANTLY, IF IT WOULD AFFECT FUTURE U.S. EXTRADITION ATTEMPTS ACROSS THE BOARD. KILDAY UNQTE: HARTMAN

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